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HOUSE BILL 568

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

R. DAVID PEDERSON

AN ACT

RELATING TO CORRECTIONS; REQUIRING INMATES TO EARN MERITORIOUS DEDUCTIONS FROM A TERM OF IMPRISONMENT; ENACTING THE CORRECTIONS POPULATION CONTROL ACT; ESTABLISHING THE CORRECTIONS POPULATION CONTROL COMMISSION; PROVIDING FOR THE DUTIES AND AUTHORITY OF THE COMMISSION; PROVIDING MECHANISMS FOR ADDRESSING INMATE OVERCROWDING; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 33-2-34 NMSA 1978 (being Laws 1978, Chapter 40, Section 1, as amended) is repealed and a new Section 33-2-34 NMSA 1978 is enacted to read:

"33-2-34. [NEW MATERIAL] ELIGIBILITY FOR EARNED MERITORIOUS DEDUCTIONS. --

A. An inmate confined in the penitentiary of New

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1 Mexico or other state correctional facility for committing a
2 violent offense is eligible to earn meritorious deductions of up
3 to four days per month upon recommendation of the classification
4 committee and approval by the warden.

5 B. An inmate confined in the penitentiary of New
6 Mexico or other state correctional facility for committing a
7 nonviolent offense is eligible to earn meritorious deductions of
8 up to thirty days per month upon recommendation of the
9 classification committee and approval by the warden.

10 C. In order to earn meritorious deductions, an
11 inmate shall actively participate in a full-time program
12 recommended and approved for him by the classification
13 committee. The classification committee may recommend and
14 approve only education programs, drug or alcohol treatment
15 programs, drug or alcohol counseling programs, corrections
16 industries programs or productive work activities. A full-time
17 program shall include at least twenty-five hours of activity per
18 week.

19 D. An inmate whose record of conduct shows that he
20 has performed exceptionally meritorious service and whose record
21 of conduct shows that he has otherwise faithfully observed the
22 rules of the institution may be eligible for a lump sum
23 meritorious deduction award, not to exceed one year per award
24 and not to exceed a total of one year for all lump sum
25 meritorious deduction awards awarded in any consecutive twelve-

1 month period, which may be deducted from the length of the
2 sentence then remaining unserved. Exceptionally meritorious
3 service shall include heroic acts of saving life or property,
4 but shall not include acts in performance of normal work duties
5 or program assignments. The classification committee and the
6 warden may recommend the number of days to be awarded in each
7 case based upon the particular merits, but any award shall be
8 determined by the director of adult institutions. Allowance for
9 exceptionally meritorious service shall be in addition to the
10 meritorious deductions provided for in Subsections A and B of
11 this section, and in the event two or more consecutive sentences
12 are being served, the aggregate of the several sentences shall
13 be the basis upon which the deduction shall be computed.

14 E. The meritorious deductions provided for in
15 Subsections A and B of this section shall pertain to both the
16 basic sentence to be served and any enhanced term of
17 imprisonment pursuant to the provisions of the Criminal
18 Sentencing Act. Meritorious deductions of up to ninety days per
19 occurrence shall be permanently forfeited upon recommendation of
20 the classification committee and approval of the warden if the
21 inmate does not properly maintain the standard upon which the
22 award was based. For those inmates, permanent forfeitures in
23 excess of ninety days may be made upon approval of the director
24 of adult institutions. No inmate shall forfeit more than fifty
25 percent of his meritorious deductions accrued during the

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1 previous twelve months; and after forfeiture of any portion of
2 an inmate's accrued meritorious deductions, the remainder shall
3 vest and shall not be subject to further forfeiture.

4 F. An inmate is not eligible to earn meritorious
5 deductions if he:

6 (1) disobeys an order to perform labor,
7 pursuant to Section 33-8-4 NMSA 1978;

8 (2) is in disciplinary segregation; or

9 (3) is not actively participating in a program
10 recommended and approved for him by the classification
11 committee.

12 G. The provisions of this section shall not be
13 interpreted as providing eligibility to earn meritorious
14 deductions to an inmate during the initial thirty years of a
15 sentence imposed pursuant to the provisions of:

16 (1) Subsection A of Section 30-2-1 NMSA 1978;

17 (2) Section 31-18-23 NMSA 1978; or

18 (3) Section 31-18-25 NMSA 1978.

19 H. The corrections department shall promulgate rules
20 and regulations to implement the provisions of this section, and
21 the rules and regulations shall be matters of public record. A
22 concise summary of the rules and regulations shall be provided
23 to every inmate and every inmate shall receive a quarterly
24 statement of the meritorious deductions he has earned.

25 I. A New Mexico inmate confined in a federal or

1 out-of-state correctional facility is eligible to earn
2 meritorious deductions in the same manner as an inmate
3 imprisoned in a state-run correctional facility on the basis of
4 his inmate conduct reports furnished by those facilities to the
5 corrections department, subject to approval by the corrections
6 department.

7 J. An inmate imprisoned in a correctional facility
8 that is operated by a public entity or a private company,
9 pursuant to a contract with the corrections department, is
10 eligible to earn meritorious deductions in the same manner as an
11 inmate imprisoned in a state-run correctional facility, subject
12 to approval by the corrections department.

13 K. As used in this section:

14 (1) "great bodily harm" means an injury to the
15 person that creates a high probability of death; or that causes
16 serious disfigurement; or that results in permanent loss or
17 impairment of the function of any member or organ of the body;

18 (2) "nonviolent offense" means any felony
19 offense other than a violent offense or any misdemeanor offense;
20 and

21 (3) "violent offense" means:

22 (a) second degree murder, as provided in
23 Section 30-2-1 NMSA 1978;

24 (b) voluntary manslaughter, as provided
25 in Section 30-2-3 NMSA 1978;

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1 (c) assault with intent to commit a
2 violent felony, as provided in Section 30-3-3 NMSA 1978, which
3 results in great bodily harm;

4 (d) criminal sexual penetration, as
5 provided in Section 30-9-11 NMSA 1978; and

6 (e) robbery, as provided in Section
7 30-16-2 NMSA 1978, which results in great bodily harm."

8 Section 2. Section 33-2-36 NMSA 1978 (being Laws 1988,
9 Chapter 78, Section 6) is amended to read:

10 "33-2-36. FORFEITURE OF EARNED MERITORIOUS DEDUCTIONS. --

11 [~~Any accrued deductions may be forfeited by the convict~~]

12 A. Meritorious deductions earned by an inmate may be
13 forfeited by that inmate for any major conduct violation upon
14 the recommendation of the classification committee, approval by
15 the warden and final approval by the secretary of corrections.

16 B. The provisions of this section also apply to
17 forfeiture of earned meritorious deductions for an inmate
18 imprisoned in a correctional facility operated by a public
19 entity or a private company, pursuant to a contract with the
20 corrections department."

21 Section 3. Section 33-2-37 NMSA 1978 (being Laws 1988,
22 Chapter 78, Section 7) is amended to read:

23 "33-2-37. RESTORATION OF FORFEITED MERITORIOUS
24 DEDUCTIONS. --

25 A. Meritorious deductions forfeited under Section

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1 33-2-36 NMSA 1978 may be restored in whole or in part to [~~any~~
2 ~~prisoner~~] an inmate who is exemplary in conduct and work
3 performance for a period of not less than six months following
4 the date of forfeiture. Meritorious deductions may be restored
5 upon recommendation of the classification committee, approval by
6 the warden and final approval by the secretary of corrections.

7 B. The provisions of this section also apply to
8 restoration of earned meritorious deductions for an inmate
9 imprisoned in a correctional facility operated by a public
10 entity or a private company, pursuant to a contract with the
11 corrections department."

12 Section 4. Section 33-2-38 NMSA 1978 (being Laws 1889,
13 Chapter 76, Section 13, as amended) is amended to read:

14 "33-2-38. COMPUTATION OF TERM -- [~~Sec. 54. No convict~~
15 ~~shall~~] An inmate shall not be discharged from the penitentiary
16 of New Mexico or other correctional facility until he has
17 [~~remained~~] served the full term for which he was sentenced.
18 [~~to~~] The term shall be computed from and [~~including~~] include the
19 day on which his sentence took effect and [~~excluding~~] shall
20 exclude any time the [~~convict~~] inmate may have been at large by
21 reason of escape [~~therefrom~~], unless he [~~may be~~] is pardoned or
22 otherwise released by legal authority. [~~Provided that nothing~~
23 ~~in~~] The provisions of this section shall [~~be so construed as~~]
24 not be interpreted to deprive [~~any convict~~] an inmate of any
25 reduction of time to which he may be entitled [~~to under § 5070~~]

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1 pursuant to the provisions of Section 33-2-34 NMSA 1978. "

2 Section 5. [NEW MATERIAL] SHORT TITLE. -- Sections 5
3 through 12 of this act may be cited as the "Corrections
4 Population Control Act".

5 Section 6. [NEW MATERIAL] FINDINGS--PURPOSE. --

6 A. The legislature finds that:

7 (1) for many years, the state of New Mexico has
8 experienced difficulty in managing the size of its inmate
9 population. Often, the number of beds has been insufficient to
10 accommodate the inmate population committed or detained in
11 correctional facilities;

12 (2) an overcrowded inmate population was a
13 major cause of the disturbance that erupted at the penitentiary
14 of New Mexico in 1980. Moreover, problems caused by
15 overcrowding remain at the center of the ongoing federal
16 litigation involving the corrections department;

17 (3) a permanent solution to the overcrowded
18 inmate population must be established to ensure that the
19 corrections department is able to effectively operate its
20 facilities, to mitigate public safety concerns and to reduce the
21 likelihood of future litigation;

22 (4) although the corrections department is
23 responsible for the operation of correctional facilities, it
24 cannot resolve the problem of overcrowding by itself. The
25 department has no control over the admission of inmates into its

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1 facilities and has only limited control over the release of
2 inmates from its facilities; and

3 (5) a permanent solution to the overcrowded
4 inmate population requires participation, commitment and
5 cooperation by the legislative, judicial and executive branches
6 of government and all criminal justice agencies.

7 B. The purpose of the Corrections Population Control
8 Act is to establish a corrections population control commission
9 that shall operate as an autonomous, nonpartisan body. The
10 commission shall develop and implement mechanisms to prevent the
11 inmate population from exceeding the capacity of correctional
12 facilities and shall take appropriate action when necessary to
13 effect the reduction of the inmate population.

14 Section 7. [NEW MATERIAL] DEFINITIONS. --As used in the
15 Corrections Population Control Act:

16 A. "commission" means the corrections population
17 control commission;

18 B. "female prison facility" means any female prison
19 facility so designated by the corrections department;

20 C. "male prison facilities" means:

21 (1) the penitentiary of New Mexico, located in
22 Santa Fe;

23 (2) the central New Mexico correctional
24 facility, located in Los Lunas;

25 (3) the Los Lunas correctional facility,

1 located in Los Lunas;

2 (4) the southern New Mexico correctional
3 facility, located in Las Cruces;

4 (5) the western New Mexico correctional
5 facility, located in Grants;

6 (6) the Roswell correctional facility, located
7 in Hagerman; and

8 (7) any other male prison facilities so
9 designated by the corrections department;

10 D. "nonviolent offender" means a person convicted
11 for a criminal offense that resulted from an act that did not
12 involve physical injury, physical violence or great bodily harm
13 or a substantial threat or risk of physical injury, physical
14 violence or great bodily harm to another person, to be
15 determined by the commission. "Nonviolent offender" does not
16 include a person convicted pursuant to the provisions of Section
17 31-18-16 or 31-18-16.1 NMSA 1978, Subsection D of 31-18-17 NMSA
18 1978 or Subsection G of Section 66-8-102 NMSA 1978, or a person
19 classified by the corrections department as a maximum-security
20 inmate; and

21 E. "rated capacity" means the actual general
22 population bed space, including only individual cells and areas
23 designed for the long-term housing of inmates, available in the
24 female prison facility or male prison facilities as certified by
25 the secretary of corrections and subject to applicable state and

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1 federal law.

2 Section 8. [NEW MATERIAL] COMMISSION-- CREATION--
3 MEMBERSHIP. --

4 A. There is created the "corrections population
5 control commission".

6 B. The commission shall be composed of thirteen
7 members. Appointed members shall serve at the pleasure of the
8 appointing authority. The commission shall consist of the
9 following individuals or their designees:

10 (1) the secretary of corrections, who shall
11 serve as chairman of the commission;

12 (2) the president of the district attorneys'
13 association;

14 (3) the chief public defender;

15 (4) the president of the New Mexico criminal
16 defense lawyers association;

17 (5) the chief of the New Mexico state police;

18 (6) the chief justice of the supreme court;

19 (7) a district court judge appointed by the
20 district court judges' association of New Mexico;

21 (8) the chairman of the parole board;

22 (9) the secretary of children, youth and
23 families; and

24 (10) two members each from the house of
25 representatives and the senate, representative of the majority

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1 and minority political parties, to be appointed by the New
2 Mexico legislative council.

3 C. a majority of the members of the commission
4 constitutes a quorum for the transaction of commission business.

5 D. The members of the commission shall be paid
6 pursuant to the provisions of the Per Diem and Mileage Act and
7 shall receive no other perquisite, compensation or allowance.

8 Section 9. [NEW MATERIAL] COMMISSION- - DUTIES- - ANNUAL
9 REPORT. - -

10 A. The commission shall study, develop and recommend
11 policies and mechanisms designed to manage the growth of the
12 inmate population by:

13 (1) developing models to accurately forecast
14 projected growth in the inmate population;

15 (2) providing information concerning impacts on
16 the inmate population caused by changes in sentencing policies
17 and law enforcement policies;

18 (3) reviewing the inmate classification system;

19 (4) expanding the availability of alternatives
20 to incarceration;

21 (5) analyzing the need for future construction
22 of additional correctional facilities and the location of the
23 facilities;

24 (6) certifying, on a semiannual basis, that an
25 adequate level of programming is offered by the corrections

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1 department to ensure that all inmates who want to earn
2 meritorious deductions have an opportunity to do so;

3 (7) if necessary, preparing proposed
4 legislation to further implementation of its policy
5 recommendations; and

6 (8) considering all of its recommendations in
7 light of public safety concerns.

8 B. The provisions of Subsection A of Section 33-2-34
9 NMSA 1978 shall take effect upon certification by the commission
10 that an adequate level of programming is offered by the
11 corrections department to ensure that all inmates who want to
12 earn meritorious deductions have an opportunity to do so. If
13 the commission fails to certify an adequate level of
14 programming, on a semiannual basis, for any reason, the
15 provisions of Subsection B of Section 33-2-34 NMSA 1978 will
16 apply to all inmates.

17 C. The commission shall submit an annual report of
18 its activities and legislative proposals to the interim
19 legislative committee with jurisdiction over corrections issues.
20 The report shall be filed with the interim legislative committee
21 no later than November 1 of each year.

22 Section 10. [NEW MATERIAL] OVERCROWDING--PRIMARY
23 POPULATION CONTROL MECHANISMS--PROCEDURES.--When the inmate
24 population of the female prison facility or the male prison
25 facilities exceeds ninety-five percent of the rated capacity for

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1 thirty consecutive days, the secretary of corrections shall
2 notify the governor and the commission concerning the potential
3 for overcrowding. No later than five days following that
4 notification, the commission shall meet to discuss and initiate
5 one or more of the following measures as a means to reduce the
6 overcrowding:

7 A. provide immediate notification to all district
8 courts concerning the overcrowding;

9 B. increase the number of inmates transferred to
10 community corrections programs;

11 C. accelerate parole hearings for eligible inmates
12 and expedite release of inmates who are granted parole;

13 D. temporarily suspend the return of technical
14 parole violators to the custody of the corrections department;
15 and

16 E. authorize the award of emergency release credits
17 to nonviolent offenders who are within thirty days of parole or
18 release.

19 Section 11. [NEW MATERIAL] OVERCROWDING--SECONDARY
20 POPULATION CONTROL MECHANISMS--PROCEDURES.--

21 A. If, sixty days after the secretary of
22 corrections' notification to the governor and commission
23 concerning overcrowding, the primary population control
24 mechanisms fail to result in a reduction of inmate population to
25 ninety-five percent or less of the rated capacity, the secretary

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1 shall notify the governor and the commission that the potential
2 for overcrowding persists. No later than five days following
3 that notification, the commission shall meet to discuss and
4 initiate one or more of the following measures as a means to
5 reduce the overcrowding:

6 A. provide immediate notification to all district
7 courts regarding the overcrowding; and

8 B. authorize the award of emergency release credits
9 to nonviolent offenders who are within ninety days of parole or
10 release.

11 Section 12. [NEW MATERIAL] OVERCROWDING--TERTIARY
12 POPULATION CONTROL MECHANISMS--PROCEDURES.--If, one hundred
13 twenty days after the secretary of corrections' notification to
14 the governor and commission concerning overcrowding, the
15 secondary population control mechanisms fail to result in a
16 reduction of inmate population to ninety-five percent or less of
17 the rated capacity, the secretary shall notify the governor and
18 the commission that the potential for overcrowding persists. No
19 later than five days following that notification, the commission
20 shall meet to discuss and initiate one or more of the following
21 measures as a means to reduce the overcrowding:

22 A. provide immediate notification to all district
23 courts regarding the overcrowding; and

24 B. authorize the award of emergency release credits
25 to nonviolent offenders who are within one hundred eighty days

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1 of parole or release.

2 Section 13. REPEAL. --Section 33-8-14 NMSA 1978 (being Laws
3 1981, Chapter 127, Section 14) is repealed.

4 Section 14. APPLICABILITY. --The provisions of Sections
5 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978 apply to persons
6 convicted of a criminal offense committed on or after July 1,
7 1997.

8 Section 15. EFFECTIVE DATE. --The effective date of the
9 provisions of this act is July 1, 1997.

10 - 16 -

State of New Mexico
House of Representatives

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4 **FORTY-THIRD LEGISLATURE**
5 **FIRST SESSION, 1997**
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8
9 **February 14, 1997**
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11 **Mr. Speaker:**
12

13 **Your JUDICIARY COMMITTEE, to whom has been referred**
14

15 **HOUSE BILL 568**
16

17 **has had it under consideration and reports same with**
18 **recommendation that it DO PASS, amended as follows:**

- 19 **1. On page 1, line 14, after "COMMISSION" insert ";**
20 **ABOLISHING THE CORRECTIONS COMMISSION".**
21
22 **2. On page 1, line 17, before the period insert "; MAKING AN**
23 **APPROPRIATION; DECLARING AN EMERGENCY".**
24
25 **3. On page 1, between lines 19 and 20, insert the following**
new sections:

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"Section 1. Section 33-1-2 NMSA 1978 (being Laws 1978, Chapter 4, Section 1, as amended) is amended to read:

"33-1-2. DEFINITIONS. -- As used in the Corrections Act:

A. "division" or "department" means the corrections department;

B. "director" or "secretary" means the secretary of corrections;

C. "corrections facility" means any facility or program controlled or operated by the state or any of its agencies or departments and supported wholly or in part by state funds for the correctional care of persons, including but not limited to:

(1) the "penitentiary of New Mexico", which consists of the penitentiary at Santa Fe and other places in the state designated by the secretary; and

(2) the state board of probation and parole, except to the extent delegated to the parole board by the Parole Board Act;

~~D. "commission" means the corrections commission; and~~

~~E.] D.~~ "warden" or "superintendent" means the

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2 administrative director of a correctional facility. "

3
4 Section 2. Section 33-1-4 NMSA 1978 (being Laws 1969,
5 Chapter 226, Section 4, as amended) is amended to read:

6 "33-1-4. CORRECTIONS ~~[DIVISION]~~ DEPARTMENT. -- ~~[A. There is~~
7 ~~created within the criminal justice department the "corrections~~
8 ~~division".]~~ The ~~[division]~~ department is responsible for all
9 matters pertaining to corrections as provided in the Corrections
10 Act or other law.

11
12 ~~[B. There is created the "corrections commission"~~
13 ~~consisting of seven members appointed by the governor with the~~
14 ~~advice and consent of the senate for staggered terms, one ending~~
15 ~~June 30, 1972 and two ending June 30 of each of the following~~
16 ~~three years. Thereafter, appointments shall be made for terms of~~
17 ~~four years or less in a manner that the terms of one or two~~
18 ~~members expire as the case may be on June 30 each year. Members~~
19 ~~of the commission shall be reimbursed as provided in the Per Diem~~
20 ~~and Mileage Act and shall receive no other compensation,~~
21 ~~perquisite or allowance. Four members of the commission~~
22 ~~constitute a quorum for the transaction of business. Not more~~
23 ~~than four members shall be of the same political party. Four of~~
24 ~~the members shall be persons who have displayed interest in~~
25 ~~juvenile correction and rehabilitation matters and three shall be~~
~~persons who have displayed interest in adult correction and~~
~~rehabilitation matters. Any member who fails to attend any three~~
~~consecutive meetings of the commission without being excused by~~

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~~the commission shall be automatically removed.~~

~~C. The commission shall advise the director in the management and control of the division.]".~~

4. Renumber the succeeding sections accordingly.

5. On page 2, line 11, strike "full-time".

6. On page 2, line 14, after the comma insert "mental health programs, ".

7. On page 2, line 15, strike ", corrections" and insert in lieu thereof "or work programs. ".

8. On page 2, strike all of lines 16 through 18.

9. On page 4, line 3, after the period insert the following:

"Notwithstanding any other provisions of this act, an inmate may forfeit up to one hundred percent of all accrued meritorious deductions if he commits any of the following:

(1) an act of actual personal violence, as defined by the corrections department against:

(a) another inmate;

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- (b) corrections department personnel;
- (c) employee of a contractor operating on behalf of the corrections department; or
- (d) any other person lawfully on the premises of a corrections department facility or other facility where department inmates are housed;

- (2) one positive drug test while incarcerated;
- (3) escape; or
- (4) any felonious act."

10. On page 4, line 8, strike "or".

11. On page 4, line 11, strike the period and insert in lieu thereof "; or".

12. On page 4, between lines 11 and 12, insert the following new paragraph:

"(4) is within the first thirty days' receipt by the corrections department and his record from the county jail reflects that he has committed misconduct in the county jail that in the professional judgment of the corrections department should result in a delay of thirty days to begin earning meritorious

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deductions. "

13. On page 7, line 3, strike "six" and insert in lieu thereof "twelve".

14. On page 10, strike all of lines 10 through 20 and insert in lieu thereof a new subsection:

"D. "nonviolent offender" means:

(1) a person not convicted of the following violent offenses:

(a) murder in the first degree or murder in the second degree pursuant to the provisions of Section 30-2-1 NMSA 1978;

(b) aggravated assault, pursuant to the provisions of Section 30-3-2 NMSA 1978;

(c) aggravated battery, pursuant to the provisions of Section 30-3-5C NMSA 1978;

(d) kidnapping, pursuant to the provisions of Section 30-4-1 NMSA 1978;

(e) abuse of a child, pursuant to the provisions of Subsection C of Section 30-6-1 NMSA 1978;

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(f) criminal sexual penetration, pursuant
to the provisions of Section 30-9-11 NMSA 1978;

(g) robbery while armed with a deadly
weapon, pursuant to the provisions of Section 30-16-2 NMSA 1978;

(h) use of a firearm during the commission
of a noncapital felony, pursuant to the provisions of Section 31-
18-16 NMSA 1978;

(i) intentional injury to a person sixty
years of age or older or to a handicapped person during the
commission of a noncapital felony, pursuant to the provisions of
Section 31-18-16.1 NMSA 1978;

(j) commission of three violent felonies,
pursuant to the provisions of Sections 31-18-23 and 31-18-24 NMSA
1978; or

(k) commission of two violent sex offenses,
pursuant to the provisions of Sections 31-18-25 and 31-18-26 NMSA
1978;

(2) a person not convicted of a violent felony,
as enumerated in Paragraph (1) of this subsection, in another
state, federal jurisdiction or foreign country within the last ten
years;

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(3) a person not serving a sentence of life imprisonment or a single or combined sentence of more than twenty years involving physical injury, physical violence or great bodily harm or a substantial threat or risk of physical injury, physical violence or great bodily harm to another person to be determined by the commission; or

(4) a person not classified as a maximum security inmate; and".

15. On pages 11 and 12, strike Subsection B in its entirety and insert in lieu thereof:

"B. The commission shall be appointed for two-year terms and shall be composed of:

(1) the secretary of corrections, who shall serve as chairman;

(2) a representative appointed by the New Mexico supreme court;

(3) two representatives appointed by the speaker of the house of representatives, in consultation with the house leadership;

(4) two representatives appointed by the president pro tempore of the senate, in consultation with the senate

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FIRST SESSION, 1997

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Leadership;

(5) a representative appointed by the governor. "

16. On page 12, line 13, strike "developing" and insert in lieu thereof "reviewing corrections department".

17. On page 12, line 13, strike "accurately".

18. On page 12, strike lines 18 through 20.

19. Renumber the succeeding paragraphs accordingly.

20. On page 12, line 22, after "facilities" insert a semicolon, strike the remainder of the line, strike all of lines 23 through 25, and on page 13, strike lines 1 and 2.

21. Renumber the succeeding paragraphs accordingly.

22. On page 13, between lines 21 and 22, insert a new subsection:

"D. The commission staff support shall be provided by the corrections department. "

23. On pages 13 through 16, strike all of Sections 10 through 12 and insert in lieu thereof:

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1
2 "Section 10. [NEW MATERIAL] OVERCROWDING-- POPULATION
3 CONTROL MECHANISM - PROCEDURES. --

4 A. When the inmate population of the corrections
5 department facilities, exclusive of the inmate population housed
6 in facilities used to relieve interim overcrowding, exceeds one
7 hundred twelve percent of rated capacity on or before June 30,
8 1999 or one hundred percent of rated capacity after June 30, 1999,
9 for a period of thirty consecutive days, the following measures
10 shall be taken to reduce capacity:

11 (1) the corrections department shall engage in
12 all lawful and professionally appropriate efforts to reduce the
13 prison population to one hundred twelve percent or one hundred
14 percent of rated capacity as applicable, including in-state and
15 out-of-state prisoner transfers;

16
17 (2) if prison population is still in excess of
18 one hundred twelve percent or one hundred percent rated capacity
19 as applicable after sixty consecutive days, the secretary of
20 corrections shall notify the commission. Included in the
21 notification shall be a list of prisoners who are within one
22 hundred eighty days of their projected release date;

23 (3) the commission shall convene within ten days
24 to consider the release of prisoners on the list provided by the
25 corrections department. The commission shall also discuss with
the corrections department the impact on population of possible

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Underscored material = new
[bracketed material] = delete

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FIRST SESSION, 1997

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1
2 changes in the classification system and expanding incarceration
3 alternatives. Victims of those prisoners shall receive
4 appropriate notification that the prisoners may be released before
5 sentence completion. If requested, the commission shall hear
6 testimony or review the written statement of a victim or relative
7 of a victim, as well as any public official who wishes to object
8 to the release of a particular prisoner. For prisoners as to
9 whom an objection is made, the commission shall deliberate on the
10 release of the prisoner individually;

11 (4) for prisoners approved by the commission for
12 release, the commission shall grant emergency release credits in
13 ten-day increments that will be applied to the sentence or
14 sentences being served by the prisoners. The commission shall
15 order release of the appropriate number of prisoners to reduce the
16 prison population to the applicable rated capacity; and

17 (5) notwithstanding any other provisions of this
18 section, no prisoner shall be released:

19 (a) unless the prisoner has a parole plan
20 pursuant to applicable parole board regulations;

21 (b) if the information concerning the
22 prisoner is discovered to be materially inaccurate;

23 (c) if the prisoner commits a crime while
24 incarcerated or receives a disciplinary infraction;

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(d) if the prisoner fails a drug screening test within ten days of the scheduled release; or

(e) if the effect of a prisoner release will result in the loss of federal funds to any agency of the state.

B. If a bill is introduced during a legislative session that proposes to create a new criminal offense, proposes the imposition of mandatory sentencing or proposes an increase to an existing sentence, the corrections department shall provide the legislature with:

(1) a fiscal impact report for a period five years into the future; and

(2) a report regarding the increased number of prison beds that will be needed for a period five years into the future.

Section 11. TERMINATION OF AGENCY LIFE--TRANSFER OF FUNCTIONS. --The corrections population control commission is terminated on June 30, 2003. On July 1, the secretary of corrections shall assume the duties and responsibilities of the commission.

Section 12. APPROPRIATION. --Ten thousand dollars (\$10,000) is appropriated from the general fund to the corrections

FORTY-THIRD LEGISLATURE
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1
2 department for expenditure in fiscal year 1998 to pay the per diem
3 and mileage expenses of the commission. "

4
5 24. On page 16, strike lines 4 through 7 and insert in lieu
6 thereof:

7 "Section 14. APPLICABILITY. --The provisions of Section
8 33-2-34, 33-2-36, 33-2-38 NMSA 1978 apply to persons convicted of
9 a criminal offense committed on or after July 1, 1997. As to
10 persons convicted of a criminal offense committed prior to July 1,
11 1997, the laws with respect to the vesting of meritorious
12 deductions in effect at the time the offense was committed shall
13 apply. "

14
15 25. On page 16, strike lines 8 and 9 and insert in lieu
16 thereof:

17 "Section 15. EMERGENCY. --It is necessary for the public
18 peace, health and safety that this act take effect immediately. "

19
20 26. Renumber sections, reletter subsections and renumber
21 paragraphs to correspond with these amendments. ,

22 and thence referred to the APPROPRIATIONS AND FINANCE
23 COMMITTEE.

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Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 11 For 1 Against

Yes: 11

No: Mallory

Excused: Rios

Absent: None

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 19, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred

HOUSE BILL 568, as amended

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. Strike House Judiciary Committee Amendments 2, 15 and 23.
2. On page 1, line 17, before the period insert "; DECLARING AN EMERGENCY".
3. On page 11 and 12, strike Subsection B in its entirety and insert in lieu thereof:
"B. The commission shall be appointed for two-year terms and shall be composed of:

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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1

2

(1) the secretary of the corrections department, who shall serve as chairman;

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(2) a member appointed by the New Mexico supreme court;

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6

(3) one representative appointed by the speaker of the house of representatives;

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(4) one senator appointed by the president pro tempore of the senate;

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11

(5) one representative and one senator appointed by the minority leader of the house of representatives and the senate, respectively;

12

13

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15

(6) one member appointed by the governor. "

16

17

4. On pages 13 through 16, strike all of Sections 10 through 12 and insert in lieu thereof:

18

19

"Section 10. [NEW MATERIAL] OVERCROWDING-- POPULATION CONTROL MECHANISM- PROCEDURES. --

20

21

22

A. When the inmate population of the corrections department facilities, exclusive of the inmate population housed in facilities used to relieve interim overcrowding, exceeds one hundred twelve percent of rated capacity on or before June 30, 1999 or one hundred percent of rated capacity after June 30, 1999,

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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2 for a period of thirty consecutive days, the following measures
3 shall be taken to reduce capacity:

4
5 (1) the corrections department shall engage in
6 all lawful and professionally appropriate efforts to reduce the
7 prison population to one hundred twelve percent or one hundred
8 percent of rated capacity as applicable, including in-state and
9 out-of-state prisoner transfers;

10 (2) if prison population is still in excess of
11 one hundred twelve percent or one hundred percent rated capacity
12 as applicable after sixty consecutive days, the secretary of
13 corrections shall notify the commission. Included in the
14 notification shall be a list of prisoners who are within one
15 hundred eighty days of their projected release date;

16 (3) the commission shall convene within ten days
17 to consider the release of prisoners on the list provided by the
18 corrections department. The commission shall also discuss with
19 the corrections department the impact on population of possible
20 changes in the classification system and expanding incarceration
21 alternatives. Victims of those prisoners shall receive
22 appropriate notification that the prisoners may be released before
23 sentence completion. If requested, the commission shall hear
24 testimony or review the written statement of a victim or relative
25 of a victim, as well as any public official who wishes to object
to the release of a particular prisoner. For prisoners as to whom
an objection is made, the commission shall deliberate on the

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release of the prisoner individually;

(4) for prisoners approved by the commission for release, the commission shall grant emergency release credits in ten-day increments that will be applied to the sentence or sentences being served by the prisoners. The commission shall order release of the appropriate number of prisoners to reduce the prison population to the applicable rated capacity; and

(5) notwithstanding any other provisions of this section, no prisoner shall be released:

(a) unless the prisoner has a parole plan pursuant to applicable parole board regulations;

(b) if the information concerning the prisoner is discovered to be materially inaccurate;

(c) if the prisoner commits a crime while incarcerated or receives a disciplinary infraction;

(d) if the prisoner fails a drug screening test within ten days of the scheduled release; or

(e) if the effect of a prisoner release will result in the loss of federal funds to any agency of the state.

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B. If a bill is introduced during a legislative session that proposes to create a new criminal offense, proposes the imposition of mandatory sentencing or proposes an increase to an existing sentence, the corrections department shall provide the legislature with:

(1) a fiscal impact report for a period five years into the future; and

(2) a report regarding the increased number of prison beds that will be needed for a period five years into the future.

Section 11. TERMINATION OF AGENCY LIFE--TRANSFER OF FUNCTIONS.--The corrections population control commission is terminated on June 30, 2003. On July 1, 2003, the secretary of corrections shall assume the duties and responsibilities of the commission. "

5. Renumber sections, reletter subsections and renumber paragraphs to correspond with these amendments.

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

HAFC/HB 568, aa

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Respectfully submitted,

Max Coll, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 12 For 3 Against

Yes: 12

No: Saavedra, Townsend, Wallace

Excused: Picraux, Watchman

Absent: None

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FORTY-THIRD LEGISLATURE

FIRST SESSION

February 20, 1997

HOUSE FLOOR AMENDMENT number __1__ to HOUSE BILL 568, as amended

Amendment sponsored by Representative R. David Pederson.

1. Strike House Judiciary Committee Amendment 14.

2. On page 8, between lines 1 and 2, insert the following new section:

Section 5. Section 33-8-2 NMSA 1978 (being Laws 1981, Chapter 127, Section 2, as amended) is amended to read:

"33-8-2. DEFINITIONS. --As used in the Corrections Industries Act:

A. "commission" means the ~~corrections commission~~ secretary of corrections;

B. "department" means the corrections department;

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C. "enterprise" means a manufacturing, agricultural or service operation or group of closely related operations within the bounds of a facility but does not include standard facility maintenance activities and services;

D. "facility" means any place under the jurisdiction of the department at which individuals are confined pursuant to court order;

E. "fund" means the corrections industries revolving fund;

F. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions supported wholly or in part by funds derived from public taxation; and

G. "state agency" means the state or any of its branches, agencies, departments, boards, instrumentalities or institutions supported wholly or in part by funds derived from public taxation."

3. On page 10, strike all of lines 10 through 20 and insert in lieu thereof a new subsection:

"D. "nonviolent offender" means:

(1) a person not convicted of the following violent

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offenses:

(a) murder in the first degree or murder in the second degree pursuant to the provisions of Section 30-2-1 NMSA 1978;

(b) aggravated assault, pursuant to the provisions of Section 30-3-2 NMSA 1978;

(c) aggravated battery, pursuant to the provisions of Section 30-3-5 NMSA 1978;

(d) kidnapping, pursuant to the provisions of Section 30-4-1 NMSA 1978;

(e) abuse of a child, pursuant to the provisions of Subsection C of Section 30-6-1 NMSA 1978;

(f) criminal sexual penetration, pursuant to the provisions of Section 30-9-11 NMSA 1978;

(g) robbery while armed with a deadly weapon, pursuant to the provisions of Section 30-16-2 NMSA 1978;

(h) use of a firearm during the commission of a

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noncapital felony, pursuant to the provisions of Section 31-18-16 NMSA 1978;

(i) intentional injury to a person sixty years of age or older or to a handicapped person during the commission of a noncapital felony, pursuant to the provisions of Section 31-18-16.1 NMSA 1978;

(j) regarding commission of three violent felonies, pursuant to the provisions of Sections 31-18-23 and 31-18-24 NMSA 1978; or

(k) commission of two violent sex offenses, pursuant to the provisions of Sections 31-18-25 and 31-18-26 NMSA 1978;

(2) a person not convicted of a violent felony, as enumerated in Paragraph (1) of this subsection, from another state, federal jurisdiction or foreign country within the last ten years;

(3) a person not serving a sentence of life imprisonment or a single or combined sentence of more than twenty years involving physical injury, physical violence or great bodily harm or a substantial threat or risk of physical injury, physical violence or great bodily harm to another person to be determined by the commission; or

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(4) a person not classified as a maximum security inmate;

E. "prisoner" refers to non-violent offenders; and".

4. On page 16, between lines 1 and 2, insert the following new section:

"Section 13. TEMPORARY PROVISION. --

A. Effective immediately, the secretary of corrections shall implement those provisions of the Corrections Population Control Act that provide for the release of nonviolent offender prisoners within one hundred eighty days of projected release. This release authorization shall be implemented by the secretary of corrections without regard to the creation of the corrections population control commission provided for in the Corrections Population Control Act and without regard to the procedural time frames provided for in that act.

B. The provisions of this section shall remain in effect until July 1, 1997. "

5. Renumber sections, reletter subsections and renumber paragraphs to correspond with these amendments.

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Raymond G. Sanchez

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

Underscored material = new
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